



200208190118

Skagit County Auditor

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RETURN TO:

Port of Skagit County
P. O. Box 348
Burlington, WA 98233

Document Title: Memorandum of Understanding re Drainage Fees

Reference number: N/A

Grantors: Port of Skagit County

Grantee: Town of La Conner

Abbreviated Legal Description: Portions of Sections 25 and 26, Township 34 North,
Range 2 East, W.M.

Assessor's Parcel/Tax I.D. Number: P119186

Note: Re-recording of Auditor's File No. 200208020083 to amend signature

MEMORANDUM OF UNDERSTANDING
re
DRAINAGE FEES

- Section 1. The parties to this MEMORANDUM OF UNDERSTANDING re DRAINAGE FEES ("MOU") are the Town of LaConner, a Washington municipal corporation, the "Town" and the Port of Skagit County, a Washington municipal corporation, the "Port."
- Section 2. The Town has authority pursuant to state law to impose drainage utility fees on persons and entities owning property within the Town limits. The Port owns property, largely developed for industrial purposes, a portion of which is commonly referred to as the "South Basin" south of the Drainage District No. 15 ditch running east and west (terminating at the Swinomish Channel) through the northern portion of the Town and a second portion commonly referred to as the "North Basin" north of said drainage ditch and extending to the northerly Town limit and lying between the Swinomish Channel and the easterly Town limit.
- Section 3. In recognition of the fact that the North Basin is not within the Town's drainage basin and will not be served by the Town's drainage system, the parties recognize that drainage utility fees for the North Basin should be calculated on a basis different for other properties within the Town.
- Section 4. In light of the unique circumstances applicable to the Port's North Basin, and in consideration of the Port's agreement to the provisions of a certain RESTATED INTERLOCAL AGREEMENT between the Port and the Town, the parties wish to memorialize their understanding and reach this MOU with respect to drainage utility rates applicable to the Port.
- Section 5.
- A. The parties acknowledge that the stormwater drainage system being installed by the Town will not accommodate stormwater drainage from the North Basin. The Port hereby assumes the responsibility of complying with state and federal regulations regarding the stormwater from that area and providing all necessary stormwater drainage facilities therein.
- B. The parties recognize that because of use of portions of the Town's road system by Port tenants, their employees and patrons, the North Basin receives an indirect benefit from the Town's stormwater drainage system.

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As consideration for this indirect benefit, the parties have agreed that the Port will pay an amount equal to six percent (6%) of the stormwater fees collected by the Town. This fee will be paid annually, in arrears. The Town shall notify the Port by February 15th of each year the total amount of drainage fees collected during the previous calendar year. At that time, the Town will send an invoice for the 6% owed by the Port. The Port shall pay that amount to the Town by the following March 31st.

Section 6. The term "Impervious Surface" shall have that meaning as set forth in the Town's Municipal Code 12.30.10.

Section 7.

A. The foregoing Section 5 notwithstanding, the parties acknowledge that if the acreage of Impervious Surface in the Town increases, the North Basin's indirect proportional benefit would be reduced and, conversely, if the Impervious Surface area within the Town decreases the indirect proportional benefit to the North Basin would be increased. Presently, there are 51.4 acres of Impervious Surface included within the boundaries of the stormwater drainage utility. A sketch of the drainage utility ("Base Acreage") boundary line is attached as Exhibit A.

B. The parties agree to the following fee reductions in the event the amount of Impervious Surface increases, whether that increase in Impervious Surface occurs within the existing utility boundary or a future expansion of the utility boundary.

i. If the Impervious Surface increases to 61.7 acres (20%), then the Port's contribution shall be reduced from 6% to 5% (1/6 reduction).

ii. If the Impervious Surface increases to 77.1 acres (50%), then the Port's contribution shall be reduced from 6% to 4% (1/3 reduction).

iii. If the Impervious Surface increases to 102.8 acres (100%), then the Port's contribution shall be reduced from 6% to 3% (1/2 reduction).

iv. If the Impervious Surface increases to 154.2 acres (200%), then the Port's contribution shall be reduced from 6% to 2% (2/3 reduction).

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C. The parties agree to the following fee increases in the event the amount of Impervious Surface decreases.

i. If the Impervious Surface decreases to 39.6 acres (25%), then the Port's contribution shall be increased from 6% to 8% (1/3 increase).

ii. If the Impervious Surface decreases to 34.3 acres (33 1/3%), then the Port's contribution shall be increased from 6% to 9% (50% increase).

iii. If the Impervious Surface decreases to 25.7 acres (50%), then the Port's contribution shall be increased from 6% to 12% (100% increase).

D. The Town shall monitor and keep accurate records of any increase or decrease in the number of acres of Impervious Surface within the Town. At the time the Town bills the Port for the previous year's North Basin drainage fee, the Town shall report to the Port whether the total acreage of the Impervious Surface within the Town has changed during the previous year so as to trigger increase or decrease in the Port's North Basin drainage fee. The change in the Port's drainage fee for the North Basin required by such change of acreage shall take place commencing with the payment for the year in which the change is reported to the Port.

Section 8. The parties agree that the Port will pay drainage utility fees to the Town for the South Basin based on the same rates, rules, and regulations as applied to other commercial and industrial users. The intent of this paragraph is that the Port, for the South Basin, shall not be charged a discriminatory or disproportionate amount for stormwater drainage fees when compared to other industrial and commercial ratepayers.

Section 9. The Port hereby agrees to indemnify and hold harmless the Town for any claim for personal injury or property damage or from the enforcement of any federal, state or county regulation, including assumption of the obligation to take remedial actions required by any regulatory agency or to pay fines or assessments by any regulatory agency based on the manner by which the Port collects, stores or discharges stormwater in the North Basin. This obligation shall survive the termination of this MOU for any claim or enforcement action based on an event or series of events taking place in whole or in part during the term of this MOU.

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MEMORANDUM OF UNDERSTANDING re DRAINAGE F
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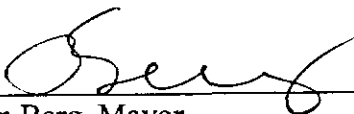
Section 10. This MOU shall become effective on September 1, 2002. This MOU shall terminate at 11:59 p.m. on August 31, 2052.

Section 11. The Town was represented in the preparation and negotiation of this MOU by Bradford E. Furlong. The Port has consulted with independent counsel concerning the issues addressed herein. No rule of construction against the party drafting this MOU shall be applied in the interpretation hereof.

Section 12. In any action to enforce this MOU, the prevailing party shall receive an award of its reasonable attorney fees and costs, including those incurred on appeal.

Section 13. This MOU may only be amended by the written agreement of the parties.

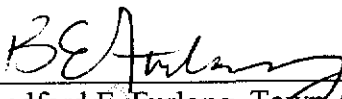
Date: 8/16/02 TOWN OF LACONNER

By: 
Eron Berg, Mayor

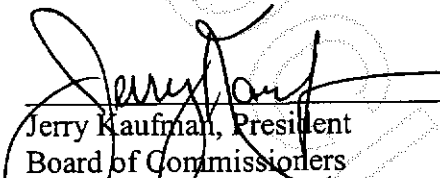
Attestation:

Approved as to form:

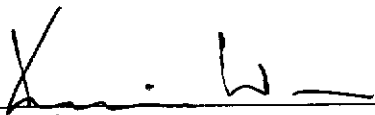

Debby Malarchick, Town Clerk


Bradford E. Furlong, Town Attorney

Date: AUGUST 14, 2002 PORT OF SKAGIT COUNTY

By: 
Jerry Kaufman, President
Board of Commissioners

Attestation:


Kevin Ware
Secretary, Board of Commissioners

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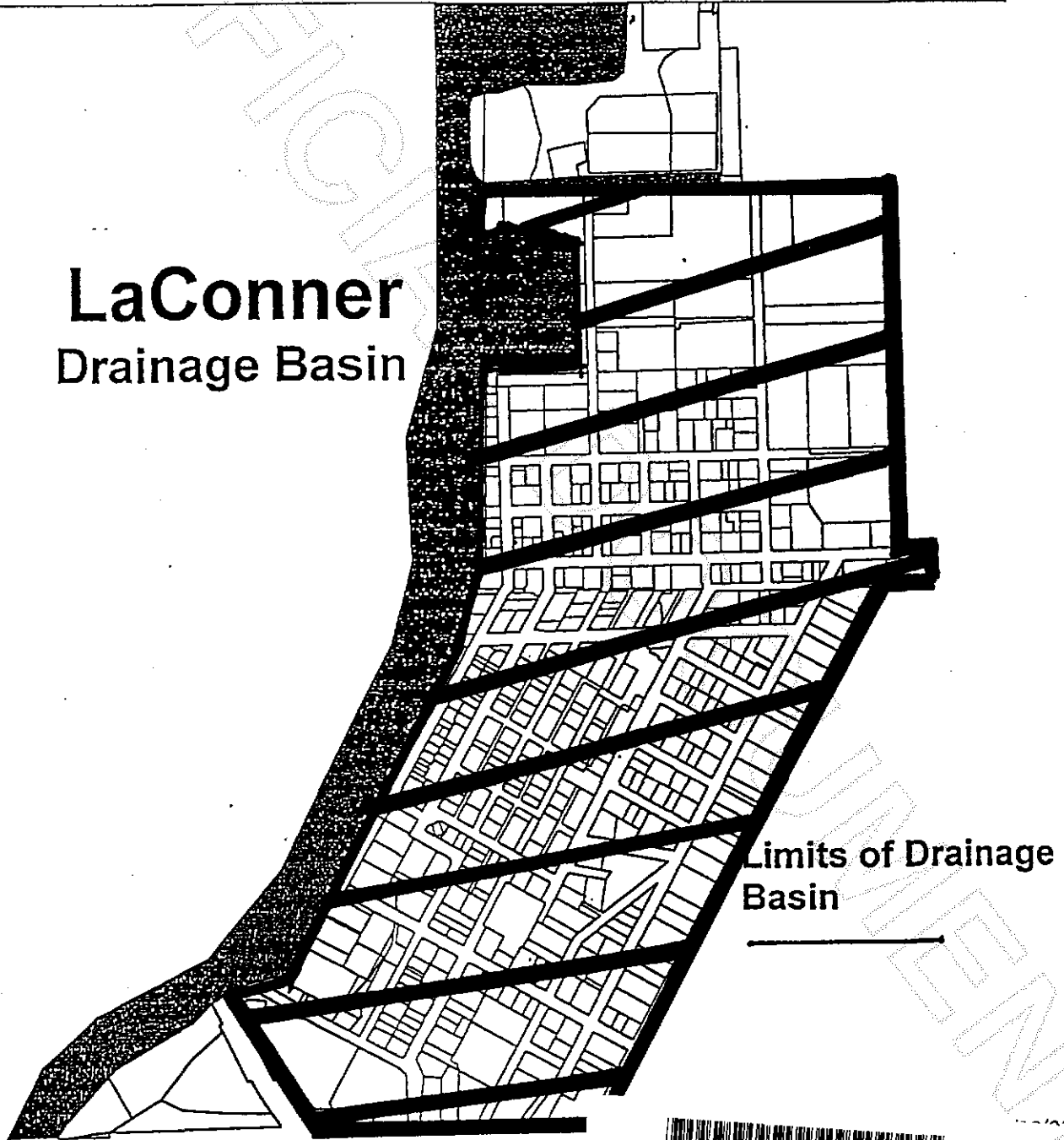


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MEMORANDUM OF UNDERSTANDING
Re DRAINAGE FEES
BASE ACREAGE
EXHIBIT "A"

**LaConner
Drainage Basin**



Limits of Drainage
Basin

